

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

ANDREW C. WIESNER,

Plaintiff

v.

DEPARTMENT OF NAVY, et al.,)

Defendants

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2:24-cv-00227-JAW

**RECOMMENDED DECISION AFTER REVIEW
OF PLAINTIFF’S COMPLAINT**

Plaintiff filed several documents through which he apparently attempts to challenge a decision of the Merit Systems Protection Board. (Complaint, ECF No. 1.) Plaintiff also filed a motion to proceed without prepayment of fees, which motion the Court granted. (Motion, ECF No. 3; Order, ECF No. 5.)

In accordance with the statute governing actions filed without the prepayment of fees, a preliminary review of Plaintiff’s complaint is appropriate. 28 U.S.C. § 1915(e)(2). Following a review of Plaintiff’s complaint, I recommend the Court dismiss the complaint unless Plaintiff amends his filings to assert an actionable claim.

DISCUSSION

28 U.S.C. § 1915 is designed to ensure meaningful access to the federal courts for individuals unable to pay the cost of bringing an action. When a party is proceeding without prepayment of fees, however, “the court shall dismiss the case at any time if the court determines,” inter alia, that the action is “frivolous or malicious” or “fails to state a claim on which relief may be granted.” 28 U.S.C. § 1915(e)(2)(B). “Dismissals [under § 1915] are

often made sua sponte prior to the issuance of process, so as to spare prospective defendants the inconvenience and expense of answering such complaints.” *Neitzke v. Williams*, 490 U.S. 319, 324 (1989).

When considering whether a complaint states a claim for which relief may be granted, courts must assume the truth of all well-plead facts and give the plaintiff the benefit of all reasonable inferences therefrom. *Ocasio-Hernandez v. Fortuno-Burset*, 640 F.3d 1, 12 (1st Cir. 2011). A complaint fails to state a claim upon which relief can be granted if it does not plead “enough facts to state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A self-represented plaintiff is not exempt from this framework, but the court must construe his complaint ‘liberally’ and hold it ‘to less stringent standards than formal pleadings drafted by lawyers.’” *Waterman v. White Interior Sols.*, No. 2:19-cv-00032-JDL, 2019 WL 5764661, at *2 (D. Me. Nov. 5, 2019) (quoting *Erickson v. Pardus*, 551 U.S. 89, 94 (2007)). “This is not to say that pro se plaintiffs are not required to plead basic facts sufficient to state a claim.” *Ferranti v. Moran*, 618 F.2d 888, 890 (1st Cir. 1980).

Plaintiff’s filings consist of a civil cover sheet on which Plaintiff describes his cause of action as “waiver of rights and claims under ADEA OWBPA,” (ECF No. 2), what appear to be the concluding paragraphs of the decision of the Equal Employment Opportunity Commission denying Plaintiff’s request for relief from a decision of the Merit Systems Protection Board, and a letter from Plaintiff by which he filed the documents and asked the Court to appoint an attorney to represent him.

Plaintiff has not alleged any facts that would support a plausible claim. Plaintiff has not explained the nature of his claim or asserted the bases of his challenge to the agency's decision. His description of his cause of action (i.e., "waiver of rights and claims under [Age Discrimination in Employment Act] [Older Workers Benefit Protection Act]" is insufficient to satisfy the pleading requirement. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("naked assertions," "labels and conclusions," and "formulaic recitation of the elements" without further factual content are insufficient to state a plausible claim for relief). Because Plaintiff has failed to allege facts that would support a claim, dismissal is warranted.

CONCLUSION

Based on the foregoing analysis, after a review of Plaintiff's complaint pursuant to 28 U.S.C. § 1915, unless Plaintiff, within the fourteen-day period for objections to this Recommended Decision, files an amended complaint that asserts a plausible claim, I recommend the Court dismiss the matter.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within fourteen (14) days of being served with a copy thereof.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

/s/ John C. Nivison
U.S. Magistrate Judge

Dated this 10th day of July, 2024.